

## Chapter 38

### TREES AND VEGETATION\*

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#### ARTICLE I. IN GENERAL

##### **Sec. 38-1. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

**Buildings and grounds:** The division in the department of public works under whose jurisdiction the master planning of parks and/or street trees fall.

**Park:** All public parks, or public open spaces having individual names.

**Principal thoroughfare:** Any street upon which trucks are not prohibited.

**Property line:** The right-of-way line of a street or highway.

**Property owner:** The person owning such property as shown by the city assessor's maps.

**Public places:** All other grounds owned by the city.

**Public trees:** All shade and ornamental trees now or hereafter growing on any street, right-of-way or any public areas where otherwise indicated.

(a) **Large trees:** Those attaining a height of forty-five (45) feet or more.

(b) **Medium trees:** Those attaining a height of thirty (30) to forty-five (45) feet.

(c) **Small trees:** Those attaining a height of less than thirty (30) feet.

**Street or highway:** The entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

**Treelawn:** That part of a street or highway, not covered by a sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

**Urban forester:** The person within buildings and grounds or his designated representative, assigned to carry out specified duties of this chapter. (Tax Code 1959, § 23.1-1; Ord. of 5-23-78; Ord. No. O-81-106, § 1, 5-26-81; Ord. No. O-99-254, 11-23-99)

##### **Sec. 38-2. Community forest plan.**

The urban forester is herewith charged to formulate and administer a community forest plan covering all trees and tree work within the municipal boundaries of the city. This plan shall list suitable species of trees to be planted on each of the streets or other public sites of the city. From and after the effective date of the community forest plan, or any amendment thereof, all planting shall conform thereto.

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\***Charter reference**—Authority to plant shade trees, § 38(9).

**Cross references**—Department of recreation and cultural services, § 2-248 et seq.; nuisances, Ch. 26; parks and public places, Ch. 28; planning, Ch. 30; license fee for landscaping, tree surgery, § 36-62.

(a) The urban forester shall consider all existing and future utility and environmental factors in the formulation of this plan in order to minimize any conflict between trees and utilities.

(b) The urban forester shall have the authority to revise the community forest plan at any time circumstance dictates. An important tool in fulfilling the community forest plan and in managing overall supervision of all trees on city property shall be a computerized tree inventory system.

(c) The community forest plan shall utilize ANSI A300 (the standard set by the National Standards Institute). Pending issuance of any topical segment of A300, the Manual of Arboricultural Specifications and Standards of Practice shall comprise the standards for tree work and tree care in the city. (See Sec. 38-23 below.) (Code 1959, § 23.1-2; Ord. of 5-23-78; Ord. No. O-81-106, § 1,5-26-81; Ord. No. O-99-254, 11-23-99)

### **Sec. 38-3. Obstruction.**

(a) Duty of occupant. It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, shrubs, weeds and other vegetation, to prune such trees, shrubs, weeds and vegetation in such manner that they will not obstruct or shade the streetlights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be eight (8) feet over sidewalks, and sixteen (16) feet over all.

(b) Duty of property owner: It shall be the duty of any person or person owning or occupying real property bordering on any street upon which property there may be trees, shrubs, weeds and other vegetation which cause potential hazard to public safety, to prune or remove such trees, shrubs, weeds and other vegetation.

(c) Notice to prune: Should any person or persons owning real property bordering on any street fail to prune trees, shrubs, weeds and other vegetation as hereinabove provided, the urban forester shall order such person or persons, within three (3) days after receipt of written notice, to so prune such trees, shrubs, weeds and other vegetation.

(d) Service of order: All notices to comply with the provisions of this article shall be served either by personal service, publication, posting or by certified mail and such procedures shall be deemed the equivalent of personal service. If the owner or owners of any unoccupied lot or premises is not a resident of the city and does not have an agent in the city upon whom notice can be served, notice may be given by sending the same by certified mail to the last-known address of the non-resident owner. The last known address of the owner shall be that shown on the current real estate tax assessment books or current real estate tax assessment records.

(e) Failure to comply: When a person to whom an order is directed shall fail to comply within the specified time, the city may prune such trees, shrubs, weeds, and other vegetation, and the cost thereof shall be recoverable from such person so failing to comply. (Code 1959, § 23.1-3; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

### **Sec. 38-4. Abuse, mutilation, or damage to public trees.**

Unless specifically authorized by the urban forester, no person shall intentionally damage, cut, carve, transplant or remove any tree on public property; nor attach any rope, wire, nails, advertising posters or other contrivance to any public tree; nor allow any gaseous liquid or solid substance which is harmful to such trees to come in contact with them; nor set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree. Any person violating the provisions of this section shall be guilty of a class 2 misdemeanor and, in addition thereto, shall be responsible for the cost of repair, or removal and replacement of any public tree so damaged. The owner of any vehicle which accidentally damages a tree(s) on public property shall be responsible for the cost of repair or removal, and the cost of a replacement tree(s) on public property. (Code 1959, § 23.1-4; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-5. Protection of trees.**

(a) All trees on any street or other publicly owned property near any excavation or construction of any building, structure or street work, shall be guarded with a good substantial fence, frame or box not less than four (4) feet high and eight (8) feet square, or at a distance in feet from the tree equal to the diameter of the trunk in inches dbh, whichever is greater, and all building material, dirt or other debris shall be kept outside the barrier.

(b) No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any public tree without first obtaining a written permit from the urban forester..

(c) The public works department shall notify the urban forester in advance of any applications for new curb, gutter, sidewalks, or driveway installations, or other improvements which might require the removal of or cause injury to any street tree, or its root system, or interfere with the fulfillment of the street tree plan. (Code 1959, § 23.1-5; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-6. Placing materials on public property.**

No person shall deposit, place, store or maintain upon any public place of the city, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing thereon, except by written permit of the urban forester. (Code 1959, § 23.1-6; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-7. Improper planting.**

Whenever any tree shall be planted or set out in conflict with the provisions of this chapter, it shall be lawful for the urban forester to remove or cause removal of said trees; and the cost thereof shall be recoverable from the person(s) responsible for such planting. (Code 1959, § 23.1-7; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-8. Removal, replanting, and replacement.**

(a) If conditions prevent planting on tree lawns, this requirement can be satisfied if any equivalent number of trees of an accepted species and size are planted on neighboring public or private property, so as to create a tree-lined street effect.

(b) No person shall remove a tree from the tree lawn for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the urban forester, and without replacing the removed tree or trees in accordance with the adopted arboricultural specifications. Such replacement shall meet the standards of size, species and placement as provided for in a permit issued by the urban forester. The person or property owner shall bear the cost of removal and replacement of all trees removed. (Code 1959, § 23.1-8; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-9. Planting in rights-of-way.**

It shall be unlawful for any person to plant or cultivate any plants, trees, shrubs or other landscaping materials within a public right-of-way without first obtaining a permit therefor from the urban forester. (Code 1959, § 23.1-9; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-10. Planting by city on application of lot owner.**

On the written application of any lot owner, desiring to have trees planted in the tree lawn adjacent to his lot, and agreeing to pay the actual cost thereof, the urban forester may comply with such application, if the conditions are found to be favorable, and the convenient use of the street will not be affected thereby. (Code 1959, § 23.1-10; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38- 11. City main te nance of trees and vege ta tion in pub li c rights- of- way.**

(a) The city is not required to cut and/or remove weeds, brush, plants, grass or other vegetation growing in the public alleys, unimproved streets and other unimproved rights-of-way except as provided in Section 26-28.1(c) of the city's weed ordinance. The city shall not cut and/or remove weeds, brush, plants, grass or other vegetation growing in the unimproved portion of the public right-of-way lying between any public street and private property lines except when the weeds, brush, plants, grass or other vegetation grow in such a manner as to obstruct the view of traffic signs, obstruct the view of an intersection or otherwise create a traffic hazard.

(b) If any tree growing in a public alley, unimproved street or other unimproved right-of-way is dead or is growing in such a manner that the branches, limbs or other parts of the tree extend or protrude onto private property in a manner that constitutes a danger to citizens or property, the city will cut and remove or prune such tree once it has been notified of the condition of the tree. It shall be the responsibility of the adjoining property owner or tenant to notify the city when a tree is growing in such a manner that it needs to be cut and removed or pruned.

(c) Any adjacent property owner, tenant or citizen, at their own expense, may cut and/or remove any weeds, brush, plants, grass or other vegetation growing in the public alleys, unimproved streets and other unimproved rights-of-way and in the unimproved portion of the public right-of-way lying between any public property and private property lines. No person shall cut and remove or prune any tree growing in the public right-of-way without first obtaining a permit from the urban forester as required in Section 38-38 of the city code. (Ord. No. O-95-327, 12-12-95; Ord. No. O-99-254, 11-23-99)

**Sec. 38- 12. For est ad vi sory com mit tee.**

The forest advisory committee of the Keep Lynchburg Beautiful Commission (KLBC) shall have among its responsibilities to monitor compliance with the provisions of this chapter and, through KLBC, to advise the urban forester of any non-compliance situation or incident, with recommendation for needed corrective action. The forest advisory committee shall explore and propose constructive solutions to any difficulties encountered by any party (whether private individual, commercial enterprise, city department, city official or employee) in conjunction with the fulfillment of this chapter. The forest advisory committee shall have no executive authority, its powers being strictly advisory. (Ord. No. O-99-254, 11-23-99)

**Secs. 38- 13—38- 21. Re served.****ARTICLE II. URBAN FORESTER****Sec. 38- 22. Ur ban forester.**

The urban forester shall have the authority and jurisdiction of regulating the planting, maintenance and removal of trees on all publicly owned property in Lynchburg to ensure safety and/or preserve the aesthetics of such public sites. (Code 1959, § 23.1-11; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-23. Duties generally.**

The urban forester shall have the authority to establish the rules and regulations of the Arboricultural Specifications and Standards of Practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public sites in the city, and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the city. The urban forester shall cause the provisions of this chapter to be enforced. In the urban forester's absence these duties shall be the responsibility of a qualified alternate designated by the superintendent of buildings and grounds. (Code 1959, § 23.1-12; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-24. Supervision.**

The urban forester shall have the authority and it shall be his duty to supervise or inspect all work done under a permit issued in accordance with the terms of this chapter. (Ord. No. O-99-254, 11-23-99)

**Sec. 38-25. Repealed by Ord. No. O-99-254, 11-23-99)****Sec. 38-26. Interference.**

No person shall hinder, prevent, delay, or interfere with the urban forester or any of his assistants while engaged in carrying out the execution or enforcement of this chapter; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the city. (Code 1959, § 23.1-13; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Secs. 38-27—38-37. Reserved.****ARTICLE III. PERMITS****Sec. 38-38. Required.**

No person shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree on any street or city owned property without first filing an application and procuring a permit from the urban forester. The person receiving the permit shall abide by the Arboricultural Specifications and Standards of Practice adopted by this chapter. (Code 1959, § 23.1-14; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-39. Application—When due.**

Application for permits required by the provisions of this article shall be made at the office of the urban forester not less than forty-eight (48) hours in advance of the time the work is to be done. (Code 1959, § 23.1-15; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-40. Same—Planting.**

The application for a permit to plant a tree under the provisions of this chapter shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting; and such other information as the urban forester shall find reasonably necessary to a fair determination of whether a permit should be issued. (Code 1959, § 23.1-16; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-41. Same—Maintenance.**

The application for a permit to maintain trees under the provisions of this chapter shall state the number and kinds of trees to be sprayed, fertilized, pruned or otherwise preserved; the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as the urban forester shall find reasonably necessary to a fair determination of whether a permit should be issued. (Code 1959, § 23.1-17; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-42. Standards of issuance.**

The urban forester shall issue the permit required by this article if, in his judgment, the proposed work is desirable and the proposed method of workmanship thereof is of a satisfactory nature. (Code 1959, § 23.1-18; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-43. Conditions.**

The urban forester shall have the authority to affix reasonable conditions to the granting of a permit in accordance with the terms of this chapter. (Code 1959, § 23.1-19; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-44. Expiration.**

Any permit granted under the provisions of this article shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. (Code 1959, § 23.1-20; Ord. of 5-23-78)

**Sec. 38-45. Notice of completion.**

Notice of completion of work authorized by a permit issued under the provisions of this article shall be given within five (5) days to the urban forester for his inspection. (Code 1959, § 23.1-21; Ord. of 5-23-78; Ord. No. O-99-254, 11-23-99)

**Sec. 38-46. Voidance.**

Any permit issued under the provisions of this article shall be void if its terms are violated. (Code 1959, § 23.1-22; Ord. of 5-23-78)